

## Company law: takeover bids

2002/0240(COD) - 02/10/2002 - Legislative proposal

**PURPOSE** : proposal for a new regulation on takeover bids **CONTENT** : the Commission's previous proposal (COD950341) on takeover bids was rejected at third reading by the European Parliament on 4 July 2001, for the following reasons: - it rejected the principle whereby, in order to take defensive measures in the face of the bid, the board of the offerree company must first obtain the approval of shareholders once the bid has been made, and this until such time as a level playing field is created for European companies facing a takeover bid - the protection for employees of companies involved in a bid was insufficient; - the proposal failed to achieve a level playing field with the United States. This new proposal pursues the same objectives as its predecessor. It aims to strengthen the legal certainty of cross-border takeover bids in the interests of all concerned and to ensure protection for minority shareholders in the course of such transactions. The following provisions are the main ones which differ from the Commission's previous proposal: - there is a definition of the price to be paid in the case of a mandatory bid. To ensure that minority shareholders obtain the best price in all cases and to afford the offeror legal certainty, the highest price paid for the same securities by the offeror over a period of between six and twelve months prior to the bid is regarded as an equitable price. Member States may authorise the adjustment of that price in circumstances and according to criteria that are clearly determined; - the new proposal retains the principle that it is for shareholders to decide on defensive measures once a bid has been made public but there is greater transparency of the defensive structures and mechanisms in the companies affected. The relevant article lists the particulars that the companies covered by the Directive should publish at least in their annual report, with special reference to the structures and measures that could hinder the acquisition and exercise of control over the company by the offeror. Shareholders must take a decision every two years on the structural measures and defensive mechanisms; - there are restrictions on transfers of securities (e.g. the imposition of a ceiling on shareholdings or restrictions on the transferability of shares) and restrictions on voting rights (e.g. restrictions on the exercise of voting rights and deferral of voting rights) are rendered unenforceable against the offeror or cease to have effect once a bid has been made public. Following a successful bid, the offeror should also have the right to call a general meeting at short notice with a view to amending the articles of association and replacing members of the board, without any restrictions on the transfers of securities or the exercise of voting rights being imposed on the offeror. The Commission feels that the combination of greater transparency with the unenforceability of measures resulting in management entrenchment should enable progress towards a more level playing field with the US. - there is a new article on information and consultation of employees, responding to concerns of MEPs. It confirms that the close involvement of companies' employees' via their representatives, is an important factor. It stresses that, in addition to the national rules which may be applicable, certain provisions of community law may be relevant in this context. This information and consultation is in addition to the specific procedure to be followed in the event of a takeover bid as provided in the proposal; - the introduction of a common squeeze-out procedure enabling a shareholder holding a given percentage of securities of a company to require the remaining minority shareholders to sell him their securities at a fair price. The proposal limits this right to cases where the percentage of securities was acquired following a takeover bid; - the introduction of a sell-out right, which provides that, following a takeover bid, a minority shareholder can require the majority shareholder to buy his securities from him. - there is a procedure for revision of the provisions.?